IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 161 OF 2003

'Goenkarancho Ekvot' ,]
a Society registered under]
the Societies Registration Act,]
having its Registered Office]
at B-168, East of Kailash,]
New Delhi 110 005,]
through its President,]
Ms. Suman Kurade] ...Petitioner

Versus

1. Union of India]
through its Secretary,]
Ministry of Home Affairs,]
North Block, New Delhi 110 001]

2. The State of Goa,]
through its Chief Secretary,]
Ministry of Home Affairs,]
Sachivalaya, Panjim, Goa]

3. The Registrar of Trade Mark]
Office of Trade Mark Registry]
Aayakar Bhavan,]
Maharshi Karve Road,]
Mumbai]

4. Sanket Food Products Pvt. Ltd.]
R.O. A-926, Addl. M.I.D.C.]
Jalna 431 203, Maharashtra]

5. Global Technology & Trademarks Ltd.]
(B.V.I.) Post Box No. 20334, Ajman,]
U.A.E.] …Respondents

Mr. D.G. Dhanure i/by M/s. M.V. Kini & Co. for the Petitioner

Mr. V.R. Dhond i/by Mr. H.W. Kane for Respondent Nos. 4 and 5.

CORAM: SWATANTER KUMAR, C.J., &
S.C. DHARMADHIKARI, J.

JUDGMENT RESERVED ON: APRIL 18, 2007
JUDGMENT PRONOUNCED ON: JUNE 21, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):-

1. The petitioner-Society, which claims to be working for and on behalf of the people of the State of Goa, has filed the present Writ Petition under Article 226 of the Constitution of India, praying that the respondent-Union of India be directed to enforce the provisions of the Emblems And Names (Prevention of Improper Use) Act, 1950 against the use of the name of 'Goa' in relation to Gutka, Pan Masala or any other similar product; and further the respondents, and particularly respondent No. 3,

be directed to quash and cancel the registration of the trade mark; and they be restrained from using the said expression as part of their trade mark.

2. Respondent No. 4 is dealing in food products, while respondent No. 5 is an organisation and is the owner of the Trade Mark “Goa 1000 Gutka”, which is being used to promote harmful product in a manner which is contrary to law and against larger public interest. Respondent No. 4, amongst others, is engaged in the business of manufacture and sale of Gutka, including “Goa 1000 Gutka”. According to the petitioner, the said goods are being marketed and sold openly in the entire territory of Goa, which is spread over an area of about 3701 square kilometres. It is also their contention that the word 'Goa' is derived from the Mundari word 'Goan-Bab' ¸meaning “inclined ear of paddy”. This expression is an expression of prestige for the residents of Goa, and the name of the product instantly invokes images of 'Goa' in the mind of people. Respondent Nos. 4 and 5 cannot use the said trade mark / name and cannot infringe the provisions of Section 9 of the Trade Marks Act,

1958 as well as cannot use the word of the State 'Goa' as it is prohibited under Section 3 of the Emblems And Names (Prevention of Improper Use) Act, 1950.

3. The petitioner had filed a petition in the High Court of Delhi at New Delhi, being C.W.P. No. 7191 of 2002, which was disposed of vide order dated 12th November, 2002, which reads as under:-

> "After some arguments, learned counsel for the petitioner seeks permission to withdraw this petition with liberty reserved to approach the competent Court having jurisdiction in the matter.
>
> Dismissed with liberty reserved as aforementioned."

Being unsuccessful, now, the petitioner has filed the present Writ Petition.

4. The first and foremost question that we are called upon to deal with is: Whether the present petition is maintainable in the present form or not? Firstly, this does not appear to be a public interest litigation satisfying the ingredients laid down by the

Supreme Court in its various judgments, including *Kusum Lata v. Union of India & Ors.* (2006) 6 Supreme Court Cases 180; *Dattaraj Nathuji Thawre v. State of Maharashtra & Ors.* (2005) 1 Supreme Court Cases 590; *Gurpal Singh v. State of Punjab & Ors.* (2005) 5 Supreme Court Cases 136 and *Dr. B. Singh v. Union of India & Ors.* (2004) 3 Supreme Court Cases 363. This is more of a private litigation at the behest of some persons who have failed to question the grant of Trade Mark Certificate and other permissions by the Competent Authority. Secondly, in fact, in the petition, there is no reference that the respondents concerned had taken any steps of making representation to any Competent Authority prior to filing of this Writ Petition. It is a settled rule of law that before seeking a mandamus, the petitioner should approach, for appropriate relief, the authorities concerned, upon whom an obligation to discharge their duty lies, before invoking the extra-ordinary jurisdiction of the Court under Article 226 of the Constitution of India. In the entire petition, there is no reference made by the petitioner that they have made an application to the Registrar of Trade Marks having jurisdiction or the Appropriate Government under the

provisions of any statute. This appears to be more of a luxurious litigation where the petitioner is bent upon filing one litigation after another. It is interesting to note that in the Writ Petition, there is no reference as to when they came to know of the alleged infringing acts. Besides the Writ Petition, being vague with no specific averments, has also been filed after an unexplained, inordinate delay. Admittedly, the Writ Petition filed by the petitioner was dismissed on 12th November, 2002 by the Delhi High Court, while the present Writ Petition was filed and taken up for hearing in the year 2003.

5. The Writ Petition does not reflect any public cause or public interest. The Writ Petition is silent as to what the petitioner's interest, in fact, is, and how does the public at large is suffering any adverse consequences as a result of use of the said name is not even reflected in the petition. Thus, we are unable to accept the contention that it is a public interest litigation and requires to be entertained as such.

6. Be that as it may, even on merits, the petitioner has no case. Firstly, we may refer to the relevant provisions of the Emblems And Names (Prevention of Improper Use) Act, 1950. Section 3 reads as under:-

> "Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use or continue to use for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or such officer of Government as may be authorised in this behalf by the Central Government."

7. The Schedule to Section 2(a) and 3 also refers to the following provisions:-

> "1 to 3 ...
>
> 4. The name, emblem or official seal or emblem of the Government of India or of any state, or any other insignia or coat-of-arms used by any such Government or by a Department of any such Government.
>
> 5. The emblems of the St. John' sAmbulance Association (India), and the St. John' sAmbulance Brigade (India), consisting of the device of a white eight pointed cross

embellished in the four principal angles alternatively with a lion passant Quadrant and a Uniform passant, whether or not the device is surrounded or accompanied by concentric circles or other decoration or by lettering.

6. The name, emblem or official seal of the President, Governor, Sadar-i-Riyasat or Republic or Union of India.

7. Any name which may suggest or be calculated to suggest -

(i) the patronage of the Government of India or the Government of a State; or

(ii) connection with any local authority or any corporation or body constituted by the Government under any law for the time being in force."

8. The cumulative reading of the above provisions shows that a person is prohibited from using in his trade activity any name or emblem specified in the schedule. Clause 4 of the schedule contemplates that name, emblem or official seal of the Government of India or of any State or any name which may suggest patronage of the Government of India or the State Government cannot be used by a person. Name of a place, thus, is not even mentioned in the schedule. It is the name, emblem or seal of Government of any State which cannot be used by any person in his trade activity. This is permissible,

provided previous permission of the Government or such officers specified by the Government is taken by the person concerned.

9. We also are unable to understand the argument that the use of the word 'Goa' is capable of being understood as if the product was having the patronage of the State Government. The Government of a State cannot be synonymous to the name of a place. The contention is based upon misconception of law, and no principles of interpretation can be applied to substantiate this contention.

10. We find that there is no merit in this petition. The same is without substance, is not a *bona fide* exercise and, in fact, is an abuse of the process of law, and, therefore, we dismiss the petition with costs, which are quantified at Rs.5,000/- payable to the contesting respondents.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.